

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA091407)**

INTRODUCTION

On September 14, 2007, the Nevada Superintendent of Public Instruction received a complaint dated September 13, 2007, from the parent of a student with disabilities alleging violations in the special education program in the Washoe County School District (WCSD). An investigation team was appointed to examine the allegations that the WCSD:

1. Failed to implement a section of a 2004 Office for Civil Rights (OCR) Agreement with regard to providing notices in native language and English as a second language program for the student.
2. Provided a pattern and practice of deception, retaliation, and hostile environment to the parent.
3. Included an incorrect citation to a federal regulation in a Prior Written Notice (PWN).
4. Described the reason the parent did not sign a notice of suspension in a way that the parent found objectionable.
5. Refused to respond to parent's e-mails and inquiries in the format the parent preferred.
6. Refused to allow the parent to tape record meetings.
7. Notified the parent that a change of placement for the student would be discussed at an upcoming Individualized Educational Program (IEP) meeting without having conducted proper evaluations.
8. Suspended the student without demonstrating that the student understood concepts of right and wrong or that the student understood English well enough to follow directions.
9. Provided improper notice to the parent regarding the discontinuance of an after school program in that: 1) the notice was after the fact; 2) the parent had not been provided with the information about the after school program in a summary report of the student's IEP; and, 3) the change in the after school program had been made after the IEP was written.
10. Placed the student with a teacher and teacher's assistant who were not trained to work with a student with autism.
11. Hired a teacher assistant for the student who did not speak Cantonese.

COMPLAINT ISSUES

Federal regulations at 34 CFR 300.153 give the Nevada Department of Education (NDE) jurisdiction to investigate complaints that a public agency has violated a requirement of Part B of the Individuals with Disabilities Education Act (IDEA). Analysis of the allegations listed above revealed that some of the allegations included in this complaint were not under the jurisdiction of NDE. Allegations #1 and #2 regarding a failure to implement an OCR agreement, and allegations regarding deception, retaliation, and hostile environment to the parent are within the jurisdiction of OCR. The NDE notes that the parent indicated in the filing of this complaint that she had copied the complaint to OCR.

Allegation #3 points out an error in an IDEA reference included in a PWN that clearly refused the parent's request that the district provide written translations of various documents. This allegation, even if true, does not constitute a violation of the IDEA because the IDEA does not require that specific references to IDEA regulations be included in written notices of refusals.

Allegations #4 and #5, even if true, do not constitute violations of the IDEA. Regarding Allegation #4, the IDEA does not require that the district note the reason why a parent chooses not to sign a notice form, so noting the parent's reason in terms that the parent finds objectionable does not violate the IDEA. If the parent believes that the note is inaccurate or misleading, the parent may request that the district amend the information; if the district decides to refuse to amend the information, it must inform the parent of the refusal and advise the parent of a right to a hearing under 34 CFR §300.619. (34 CFR §300.618) Regarding Allegation #5, the IDEA does not require the district to respond to the parent's e-mails and inquiries in a format that the parent prefers. The NDE notes that previous complaint investigations have addressed the parent's concerns regarding her language preferences for oral and written communication, and her preferences for written vs. oral translations of written material.

Allegation #6 did not include the facts on which the allegation was based and while the parent was offered an opportunity to submit further information with regard to this allegation, she did not do so.

Allegation #7 was based on an IEP meeting notice for an IEP meeting scheduled for September 19, 2007 (five days after the complaint correspondence was received by the NDE). The IEP meeting notice proposed discussing a change of placement. This allegation, even if true, does not constitute a violation of IDEA because the IDEA does not limit what a district may propose to discuss in an IEP meeting.

The remaining Allegations (#8–#11) articulated in the complaint, and clarified by a review of the documents, raised the following issues under the jurisdiction of the NDE:

- ISSUE 1:** Whether WCSD was required to conduct a manifestation determination with regard to disciplinary suspensions during the 2006/2007 and 2007/2008 school years.
- ISSUE 2:** Whether WCSD provided PWN consistent with state regulations before discontinuing the student's after school program, specifically the timeliness of the notice with regard to the after school program.
- ISSUE 3:** Whether the WCSD provided an appropriately trained special education teacher and teacher assistant for the student, specifically with regard to his autism and his native language.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Special Education Area Administrator
- Teacher Assistant

Additional Input

The parent was offered an opportunity to submit additional input relevant to the issues in this complaint, but did not do so.

DOCUMENTS REVIEWED

The investigation team reviewed the following documents:

- Parent's correspondence with NDE dated 9/13/07

- NDE's correspondence with WCSD and parent (English and Chinese) dated 9/26/07 and 10/4/07
- 12/05/05 IEP page regarding Supplementary Aids and Services
- 1/10/07 annual IEP
- PWN regarding implementation of 1/10/07 IEP (English and Chinese)
- 4/4/07 IEP revision
- PWN regarding implementation of 4/4/07 IEP (English and Chinese)
- IEP Program Summary for 1/10/07 IEP and 4/4/07 IEP Revision (English and Chinese)
- Student's attendance records for 2006/2007 and 2007/2008 school years
- WCSD school calendar for 2007/2008 school year
- Special Education teacher's licensing and credential documents
- WCSD job description for paraprofessionals (teacher assistant)

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300

FINDINGS OF FACT

This investigation involved a student with autism who attended school in the WCSD during the 2007/2008 school year. A 1/10/07 annual IEP and 1/10/07 behavior plan were in effect until an IEP meeting was held on April 4, 2007 (4/4/07 IEP revision). At the 4/4/07 IEP meeting, the IEP committee reduced the amount of time the student was to spend in the regular education environment from 40% to 4% and otherwise the IEP remained the same. The 1/10/07 annual IEP along with the 4/4/07 IEP revision were in effect up through the date of the complaint. A review of documents, an interview with the special education area administrator and the teacher assistant revealed the following facts.

Suspensions during 2006/2007 and 2007/2008

The student was suspended on 12/8/06, 12/11/06, 2/15/07, and 3/8/07 during the 2006/2007 school year. The 2007/2008 school year began on August 27, 2007. Attendance records confirm that from August 27, 2007 until the date of the complaint, the student was suspended for one school day on 9/10/07.

Student's After-School Program

Prior to the 1/10/07 IEP, the IEP in effect included an after school program on school days through 6/07/07. The 1/10/07 IEP included the provision of the after school program on school days during the school year and during the extended school year (ESY) through the ESY 2007. The 2007 ESY ended on August 4, 2007. A PWN, in English and in Chinese, dated 1/10/07, was provided to the parent notifying her of the implementation of the 1/10/07 IEP.

Following the 4/4/07 IEP revision meeting the parent was provided with a summary report of the 1/10/07 IEP and the 4/4/07 IEP revision (Summary Report) in both English and Chinese versions. Both versions of the Summary Report included the statement that the after school program would be provided during the school year through ESY 2007.

The special education administrator reported that the parent continued to have the student attend the after school program after ESY 2007. Because of this, as a reminder to the parent, a written notice, on a PWN form, was provided to the parent on August 31, 2007, explaining that

the 1/10/07 IEP stated that the after school program would only go through the 2007 ESY. August 4, 2007, was the end of the 2007 ESY.

Qualifications of Special Education Teacher and Teacher Assistant

An examination of the special education teacher's teaching license confirmed that she is licensed under the state of Nevada's "license option program" to teach students with autism.

According to the WCSD job description, a person may be hired as a paraprofessional (teacher assistant) if he/she has completed 48 semester or 60 quarter units from an accredited college or university and has one year of experience that demonstrates the ability to perform the duties of the class. The special education area administrator reported, and the 2007/2008 teaching assistant confirmed, that she (the teaching assistant) has a Masters Degree in Education from the University of Mississippi, an accredited university. She served as a WCSD teacher assistant for two years prior to the 2007/2008 school year and the special education area administrator reported that she was able to perform the duties required in the classroom.

The 1/10/07 IEP and the 4/4/07 IEP revision contain no requirements that the student needed to be taught by a special education teacher or teacher assistant with specific preparation or training, nor did the IEPs include a requirement that the student needed a teacher assistant who spoke a language other than English. There was no specific allegation made, nor any evidence found to suggest that implementation of the student's IEP was compromised because the teacher's assistant does not speak Cantonese.

CONCLUSIONS OF LAW AND REASONS

ISSUE 1: Whether WCSD was required to conduct a manifestation determination with regard to disciplinary suspensions during the 2006/2007 and 2007/2008 school years.

This complaint concerned an allegation that the student was suspended from school a number of times for behavior directly related to his autism with no indication that WCSD knew that the student understood the issues of right and wrong or that the behavior that caused the suspension was not due to frustration over his inability to communicate with staff in his native language.

Federal regulations at 34 CFR §300.536(a) state that a disciplinary change of placement occurs if the child has been subjected to a removal for "more than 10 consecutive days" or has been subjected to "a series of removals [that] total more than 10 school days" and the series of removals constitutes a pattern.

Federal regulations at 34 CFR §300.530(e)(1) state that "Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team...must review all relevant information in the student's file ..." to determine whether or not the behavior was a manifestation of the student's disability.

In this case, the student was suspended for four school days in the 2006/2007 school year and one school day in the 2007/2008 school year up to the date of the complaint. Because the student was not suspended for more than 10 school days during 2006/2007, and has not been

suspended for more than 10 school days during 2007/2007, there has been no disciplinary change of placement and no manifestation determination has been required.

Therefore, the investigation team concluded that WCSD did not violate federal regulations when it did not conduct a manifestation determination with regard to the student's suspensions during the 2006/2007 and 2007/2008 school years.

ISSUE 2: Whether WCSD provided PWN consistent with state regulations before discontinuing the student's after school program, specifically the timeliness of the notice with regard to the after school program.

This complaint concerned an allegation that WCSD provided PWN after the student's after school program was discontinued, that the parent had not been provided with the information about the after school program in a summary report of the student's IEP and that a change in the provision of the after school program had been made after the IEP was written.

State regulations at NAC §388.300.6(c) require that the public agency shall notify the parents of a pupil with a disability "within a reasonable time before any proposed or refused action regarding ... the provision of a free appropriate public education to the pupil...".

In this case, the IEP in effect up through 1/10/07 specified that the after school program would be continued up to 6/7/07. The 1/10/07 IEP extended the after school program through the end of the 2007 ESY. The parent was provided with a PWN, in English and Chinese, on 1/10/07 notifying her that the 1/10/07 IEP was to be implemented. The parent was also provided with a Summary Report, in English and Chinese, both versions of which included the fact that the after school program would be discontinued at the end of ESY 2007. There was no evidence that the termination date of the after school program was changed subsequent to the 1/10/07 IEP.

WCSD was required to notify the parents within a reasonable time before any proposed or refused action regarding the change in the provision of the after school program. The parent received PWN on 1/10/07, seven months before the after school program was scheduled to end which was a reasonable time before the proposed action. Although the 8/31/07 reminder was written on a PWN form, it was merely that, a reminder to the parent.

Therefore, the investigation team concluded that WCSD complied with state regulations when it provided PWN before discontinuing the student's after school program.

ISSUE 3: Whether the WCSD complied with state regulations when it provided an appropriately trained special education teacher and teacher assistant for the student, specifically with regard to his autism and his native language.

This complaint concerned an allegation that the teacher and instructional assistant were not trained to work with students who are English Language Learners with autism and more specifically the instructional assistant did not speak Cantonese, the student's native language.

Federal regulations at 34 CFR §300.207 require that the school district must ensure "that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156." Federal regulations at 34 CFR §300.156 require that

personnel, including paraprofessionals, have the content knowledge and skills to serve students with disabilities.

In this case, the special education teacher is appropriately licensed in Nevada to teach children with autism. The teacher assistant exceeded the educational and experience requirements of WCSD to work with autistic students in that she had a Masters Degree in Education and two years of experience as a teacher assistant prior to the 2007/2008 school year. There were no requirements in the student's IEP to provide a teacher or a teacher assistant who were prepared or trained in a specific methodology or in a language other than English. Further, there was no evidence that implementation of the student's IEP was compromised through lack of teacher and teacher assistant training, or because the teacher's assistant does not speak Cantonese.

Therefore, the investigation team concluded that WCSD complied with federal regulations requiring that the teacher and teacher assistant be appropriately trained and possess the content knowledge and skills to serve this student with a disability.